

## REMARKS

Claims 1-4 and 6-23 are currently pending, of which Claims 18-23 are withdrawn from consideration. Claim 5 has been cancelled without prejudice. Claims 1, 8, 14 and 17 are currently amended solely to clarify the meaning of the claims. As such, no new matter has been introduced by the claim amendments.

### Double Patenting Rejection

Claims 1-17 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over the claims of copending Application No. 10/392,375, 11/098,827 and 11/417,891 in view of Noecker. Applicants respectfully request that this rejection be held in abeyance until claims are allowed.

### Rejection under 35 U.S.C. § 112 ¶2

Claims 8, 14 and 17 have been rejected under 35 U.S.C. § 112 ¶2 based on the recitation of trade names. Claims 8, 14 and 17 have been amended as shown above. Claim 14 has been amended to show the accepted chemical structure of the compound with the trademark Polyquaterium 1®. As such, no new matter has been introduced by this or any of the current amendments. In light of the above, Applicants respectfully request withdrawal of this rejection.

### Rejection under 35 U.S.C. § 102 (e)

Claims 1-6, 9, 10 and 12-16 have been rejected under 35 U.S.C. § 102 (e) as being anticipated by Huth et al. (US 2003/0165545). Claim 1 has been amended as shown above to clarify that the surfactant component consists of no more than two different surfactants. As acknowledged by the Examiner, the Huth et al. reference discloses three surfactants. All of the remaining rejected claims depend at least indirectly from Claim 1. Accordingly, the Huth et al reference does not anticipate any of the rejected claims, and Applicants respectfully request withdrawal of this rejection.

### Rejection under 35 U.S.C. § 103 (a)

Claims 1-3, 6-8, 10, 11, 15, 16 and 17 have been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Goto et al. (*Ophthalmology*, 2002, 109, p. 2030-2035) (hereinafter

"Goto") in view of Noecker (*Adv. Ther.*, 2001 18, p. 205-215) (hereinafter "Noecker"). However, as evidenced by the attached Declaration, the Goto reference does not qualify as prior art.

Applicants note first that all of the limitations of Claims 1-3, 6-8, 10, 11, 15, 16 and 17 were fully disclosed in the parent application hereof, Application No. 10/392,375 filed March 18, 2003 as well as the instant application. Therefore, the rejected claims are entitled to claim priority to the March 18, 2003 filing date of the parent application.

The Goto reference was published in November 2002, which was less than one year prior to the effective filing date of the present application. The attached declaration pursuant to 37 C.F.R. §1.131 to antedate the Goto reference, as well as Exhibit "A" are attached. As set forth in the §1.131 Declaration of all co-inventors Zhi-Jian Yu, Stanley W. Huth, Lauren L. Crawford and James N. Cook, the Applicants reduced to practice the invention described in the instant specification and claims prior to November 2002 (the publication date of Goto). Hence, the Goto reference is not prior art to the present invention.

The Noecker reference alone does not provide a *prima facie* showing of obviousness. Therefore, Applicant requests that the obviousness rejection be withdrawn.

#### CONCLUSION

Should the Examiner have any questions concerning this response, the Examiner is respectfully invited to call the undersigned at the telephone number appearing below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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